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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item #7 (Rev. 1) ID #11547

ENERGY DIVISION

RESOLUTION E-4535

September 27, 2012

RESOLUTION

Resolution E-4535. San Diego Gas & Electric Co. (SDG&E) Advice Letter 2297-E; Southern California Edison Co. (SCE) Advice Letter 2644-E; Pacific Gas and Electric Co. (PG&E) Advice Letter 3251-G/3934-E

PROPOSED OUTCOME: This Resolution rejects the Tier 2 Advice Letters and proposed tariffs filed by SDG&E, SCE, and PG&E to implement the privacy and security rules adopted by Decision 11-07-056. This Resolution directs SDG&E, SCE, and PG&E to re-file these Advice Letters based on discussions held in a future workshop, as ordered by Decision 12-08-045.

ESTIMATED COST: None

By SDG&E Advice Letter 2297-E. Filed on October 27, 2011.

By SCE Advice Letter 2644-E. Filed on October 27, 2011.

By PG&E Advice Letter 3251-G/3934-E. Filed on October 27, 2011.

SUMMARY

This Resolution addresses San Diego Gas & Electric Co. (SDG&E) Advice Letter 2297, Southern California Edison Co. (SCE) Advice Letter 2644, and Pacific Gas and Electric Co. (PG&E) Advice Letter 3251-G/3934-E seeking approval of actions taken to implement Ordering Paragraph 2 from D.11-07-056. This Resolution rejects SDG&E, SCE, and PG&E's Advice Letters which proposed modifications to their tariffs to provide privacy and security protections. The Advice Letters

are rejected due to the inconsistent implementation of D.11-07-056 and inconsistent treatment of rules and requirements across the utilities. This Resolution directs SDG&E, SCE, and PG&E to coordinate and implement a consistent set of privacy and security rules, and related customer information request forms. This Resolution directs SDG&E, SCE, and PG&E to re-submit these Advice Letters on the same day as associated Advice Letters as directed by D.12-08-045. SDG&E, SCE, and PG&E are also directed to participate in a workshop, as scheduled by D.12-08-045, to develop a coordinated and consistent implementation of the privacy and security rules as adopted in D.11-07-056 and D.12-08-045, and a consistent set of customer information request forms. The results of that workshop should form the basis of the utilities' re-filed Advice Letters.

BACKGROUND

On July 28, 2011, the California Public Utilities Commission (CPUC) issued D.11-07-056 which adopted rules to protect the privacy and security of customer usage data generated by Advanced Meters for the customers of SDG&E, SCE and PG&E. As part of that decision, the CPUC directed SDG&E, SCE, and PG&E to each file a Tier 2 Advice Letter within 90 days detailing "whatever tariff changes are necessary to conform its corporate policies concerning customer usage data to the Rules Regarding Privacy and Security Protections for Energy Usage Data."¹

On October 27, 2011, SDG&E, SCE, and PG&E filed their Tier 2 Advice Letters in compliance with Ordering Paragraph 2. On November 14, 2011, PG&E filed a supplement to their Advice Letter attaching Form 79-1096, which was not attached to their October 27 filing.

 $^{^{\}rm 1}$ D.11-07-056 at Ordering Paragraph 2.

A) SDG&E Advice Letter 2297-E

SDG&E proposes to modify their existing Rule 9² and proposes a new Rule 33. According to SDG&E, Rule 33 will "ensure that SDG&E will act in compliance with all laws, regulations, and Commission orders to protect its customers' privacy and information. Consequently, SDG&E requires that all of its contractors, vendors and Energy Service Providers also act accordingly."3 Proposed Rule 33 summarizes the privacy rules adopted in D.11-07-056. In addition, SDG&E states that it is taking several steps to raise awareness of customer privacy issues internally, including development of an online training tool, creation of a Customer Information Privacy Program to provide best practices and periodic risk assessments, and creation of a customer privacy intranet website for SDG&E employees.⁴ Finally, SDG&E notes that it "will not release information that can reasonably be used to identify an individual customer, or a customer's family, household or residence, including personallyidentifiable financial information about a customer, to any third party without the customer's electronic signature or written consent" except as provided by D.11-07-056.5

B) SCE Advice Letter 2644-E

SCE proposes a new Rule 25 that will "bring SCE's current policies and processes concerning privacy and security of customer usage information into compliance with [D.11-07-056] and to make those rules as transparent as possible for customers and third parties who ... are covered by the Rule." SCE's proposed Rule 25 is based on the privacy rules adopted in D.11-07-056, but modifies, condenses or adds additional language to make the rules easier to understand.

² SDG&E's Electric Rule 9 covers "Rendering and Payment of Bills."

³ SDG&E AL 2693-E at 2.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

⁶ SCE AL 2644-E at 3.

⁷ *Id*.

In addition, SCE proposes a revised Form 14-796, "Authorization or Revocation of Authorization to Receive Customer Information or to Act on a Customer's Behalf"⁸; Form 14-796 is the form a customer signs when they authorize a third party to access their usage information. Additionally, SCE expands upon the data aggregation sections of the rules adopted by D.11-07-056 by incorporating prior language related to the "15/15 Rule,"⁹ which was adopted in an earlier Direct Access proceeding, and including other provisions related to providing data to local governments.¹⁰ Finally, SCE proposes modifications to Rules 9 and 21 that references proposed Rule 25.¹¹

C) PG&E Advice Letter 3251-G/3934-E

PG&E proposes a modification to Rule 9 that includes a new section outlining the new privacy requirements, as adopted by D.11-07-056.¹² In addition, PG&E proposes a revised Form 79-1095, "Authorization to Receive Customer Information or Act Upon a Customer's Behalf," and Form 79-1096, which is the same form as Form 79-1095, but is written in Spanish. Revisions to Forms 79-1095 and 1096 are made to conform to sections of the privacy rules addressing CPUC jurisdiction, transparency and customer notice, purpose specification, customer access and control, and use and non-disclosure limitations.¹³ PG&E states that it is "fully implementing the other requirements and programs

⁸ All three utilities have a similar Customer Information Standardized Request (CISR) authorization form. For ease of reference, these forms are collectively referred to as "CISR."

⁹ The "15/15 Rule" was adopted in D.97-10-031 and is included in Schedule CCA-INFO. The "15/15 Rule" states that any aggregated information provided by a utility must be made up of at least 15 customers and a single customer's load must be less than 15% of an assigned category.

¹⁰ SCE AL 2644-E at 3.

¹¹ *Id.* SCE Electric Rule 9 covers "Rendering and Payment of Bills" and SCE Electric Rule 21 covers "Generating Facility Interconnections."

¹² PG&E Electric Rule 9 covers "Rendering and Payment of Bills."

¹³ PG&E Advice Letter 3251-E/3934-G at 3.

required by [D.11-07-056] which apply without the need of specific tariff revisions.¹⁴

NOTICE

Notice of SDG&E AL 2297-E, SCE AL 2644-E, and PG&E AL 3251-G/3934-E was made by publication in the CPUC's Daily Calendar. SDG&E, SCE, and PG&E state that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

PROTESTS

SDG&E AL 2297-E, SCE AL 2644-E and PG&E AL 3251-G/3934-E was timely protested by the Division of Ratepayer Advocates (DRA), School Project for Utility Rate Reduction (SPURR), Local Government Sustainable Energy Coalition (LGSEC), Alliance for Retail Energy Markets (AReM), and EnerNOC and Tendril (jointly, EnerNOC) on November 16, 2011. SDG&E, SCE and PG&E responded to the protests on November 23, 2011.

SUMMARY OF PROTESTS

The protests of DRA, AReM and EnerNOC all address the same issue with regards to these Advice Letters: the utilities are implementing the privacy rules adopted in D.11-07-056 inconsistently. DRA argues that "all three investor owned utilities should coordinate and implement their tariff updates in a similar manner, as the privacy rules are the same for all three [utilities]." AReM states that implementation of the privacy rules "require the adoption of uniform rules, requirements and forms." EnerNOC also states "[t]o the greatest extent possible, the implementation of D.11-07-056 should be done in a consistent basis relative to tariff and sample form changes among utilities to avoid confusion and

¹⁵ Protest of the Division of Ratepayer Advocates at 2 (November 16, 2011).

¹⁴ *Id*.

¹⁶ AreM Protest of Southern California Edison's Advice Letter 2644-E at 2 (November 16, 2011).

to ensure consistency in implementation."¹⁷ All three protests also provide recommendations and changes to ensure consistency among implementation.

SPURR argues that changes to PG&E's CISR form goes beyond the direction of D.11-07-056 and asks for information PG&E is not authorized to receive. SPURR maintains that the CISR revisions are "an attempt by PG&E to intrude into business relationships between independent Agents and customers," and would "confuse customers and would chill innovation." Furthermore, SPURR notes that SCE removed similar terms from their CISR form in their Advice Letter. SPURR requests that the CPUC reject changes made to PG&E's CISR that seek additional information from a third party.

LGSEC argues that SCE's practices as proposed in the Advice Letter will make it difficult for local governments to obtain customer usage information. LGSEC states that requirements in SCE's proposed Rule 25 are unnecessary and burdensome to local governments, notably the requirement for a local government to obtain CPUC approval prior to release of customer data. LGSEC notes that local governments need access to customer information, both aggregated and customer specific, to support a number of initiatives, including reducing greenhouse gas emissions, enabling building energy efficiency programs, and complying with state requirements. LGSEC protests the use of the "15/15 Rule" that is inappropriate for residential and small commercial

¹⁷ Protest to Pacific Gas & Electric Company's Advice Letter 3251-G/3934-E by EnerNOC, Inc. and Tendril, Inc. at 2 (November 16, 2011).

¹⁸ SPURR Protest of PG&E Advice Letter 3251-G/3934-E at 3 (November 16, 2011).

¹⁹ *Id.* at 5.

²⁰ *Id.* at 4.

²¹ Protest of Local Government Sustainable Energy Coalition on Southern California Edison Advice Letter 2644-E at 4 (November 16, 2011).

²² *Id.* at 2.

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customers, and seeks a more efficient method for allowing local governments to access customer usage information.²³

SUMMARY OF UTILITY RESPONSES

SDG&E's replies that parties seeking a consistent implementation do not address "the validity of the proposed tariff changes," and that an effort was made by the utilities to implement D.11-07-056 in a consistent manner.²⁴ SDG&E notes that its proposed Rule 33 was developed to include important elements of the privacy rules, but that SDG&E "does not believe it is necessary or warranted to include each and every element" of the privacy rules.²⁵ However, SDG&E does submit that, if directed, SDG&E will file a revised CISR form, and agrees that "standardized, uniform rules and forms will ease implementation and minimize customer confusion."26 Finally, SDG&E clarifies issues associated with the implementation of D.11-07-056 and SB 1476.27

In its reply, SCE agrees that "the three IOUs should implement the data privacy rules from D.11-07-056 as consistently as possible," but notes that the utilities were unable to come to agreement prior to filing the Advice Letters.²⁸ In addition, SCE responds to the arguments of LGSEC noting that "[t]here is no basis for providing local governments with unfettered access to customers' private information. Indeed, constitutional privacy rights – as well as SB 1476 and D.11-07-056 – require that local governments not have unfettered access to customers' private data."29 Additionally, SCE disagrees with LGSEC that only

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<sup>23</sup> Id. at 4-5.
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²⁴ SDG&E Reply to Protests at 1 (November 23, 2011).

²⁵ *Id.* at 2.

²⁶ *Id*.

²⁷ *Id.* at 2-3.

²⁸ Reply of SCE to Protests at 3 (November 23, 2011).

²⁹ *Id.* at 12.

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large customers aggregated data needs protection; rather, all customer data that is aggregated should be protected, absent the consent of the customer.³⁰ Finally, SCE provides clarification around the definitions and implementation of proposed Rule 25 and SCE's CISR form.

PG&E's response also supports a uniform implementation of the privacy rules, and states its support for a General Order.³¹ PG&E notes that incorporation of the privacy rules by reference, as opposed to the creation of a new rule, "is more administratively efficient and less confusing."³² PG&E notes that it is willing to create a new rule, provided that the tariffs "controls" over the privacy rules.³³ PG&E also responds to protests raised in response to revisions made to their CISR forms. PG&E notes that the CISR forms should be consistent across the utilities to ensure conformance with the privacy rules.³⁴ Finally, PG&E proposes that protestors propose their own CISR form for consideration by the CPUC and other parties.³⁵

DISCUSSION

A) Advice Letters Implement D.11-07-056 Inconsistently

This Resolution rejects the Advice Letters and proposed tariff changes of SDG&E, SCE, and PG&E. Based on the Protests and the Responses, it is clear that there is a need and desire for a consistent implementation of D.11-07-056. The Protestors raise many issues which can be simplified down to one issue: inconsistency of implementation of D.11-07-056 across the utilities. This Resolution directs the utilities and other interested parties to engage in a

³⁰ *Id.* at 13.

³¹ PG&E's Protest Reply on Advice Letter 3251-G/3934-E at 1 (November 23, 2011).

³² *Id.* at 2.

³³ *Id*.

³⁴ *Id.* at 3.

³⁵ *Id.* at 4.

workshop to be scheduled by CPUC Staff to help address these inconsistencies. The utilities should re-file their Advice Letters, based on the discussion in that workshop, with the Advice Letters required by D.12-08-045.³⁶

The need for a consistent implementation of these privacy rules is important to ensure that these rules are applied as uniformly as possible across the utility service territories. Uniformity and consistency will benefit customers, third parties, utilities and the CPUC. The three utilities all support a consistent implementation of D.11-07-056, but each utility filed three different implementations. Each utility filed (or did not file) different revisions to their CISR forms. Clearly this is not beneficial or reasonable to have such a variety of interpretations and implementations of one set of rules.

In D.12-08-045, the CPUC identified the need for the gas companies to implement the privacy rules in a consistent manner, and directed CPUC Staff to hold a workshop to facilitate those discussions. This Resolution directs the electric utilities to participate in that workshop, and re-file their conforming Advice Letters based on discussions and any agreements reached in that workshop. Additionally, to the extent this workshop, and any subsequent discussions, does not result in an agreed upon implementation of the privacy rules, this Resolution directs the utilities to continue to work together, and with other third parties, to try to develop a consistent and uniform implementation of the privacy rules.

In addition, as PG&E notes, the utility CISR forms should be updated, to the extent necessary, to reflect any needed or necessary changes as a result of the privacy rules. As explained above, a consistent implementation of the privacy rules support utilities, third parties and customers; this rationale also supports ensuring that the respective CISR forms also apply the privacy rules in a consistent manner. Therefore, the workshop should also make the utilities' respective CISR forms consistent.

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³⁶ Since SCE is not subject to the directions in D.12-08-045, this Resolution adopts the same filing date as D.12-08-045 for SCE.

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This Resolution does not make a determination as to whether the utilities should file the privacy rules as verbatim in a new utility Electric Rule, as proposed by SCE and SDG&E, or whether the utilities should simply incorporate the privacy rules by reference into their tariffs, as proposed by PG&E. How the privacy rules are implemented should be discussed in the workshop.

B) Availability and Access to Aggregated Usage Data

LGSEC raises an important issue regarding access to aggregated data. The privacy rules makes clear that aggregated customer usage information should be made available without the need of customer consent.³⁷ However, as noted by SCE, what is "aggregated" will differ. SCE makes a valid point about the differences in what constitutes a sufficient level of aggregation. Despite the explanation of the availability of aggregated usage data in the adopted privacy rules, it is clear that there are still several questions related to what is aggregated data. Since the availability of aggregated information is an important topic, the workshop should determine if a more specific standard should be developed, or if the process as developed in D.11-07-056 is sufficient to address the needs of the utilities and third parties.³⁸ This Resolution reminds all parties that data minimization is a key component of any privacy policy, and is detailed in Section 5(a) of the privacy rules.³⁹

³⁷ See D.11-07-056, Attachment D at Section 6(g).

³⁸ SCE's proposed Rule 25 relies on the "15/15 Rule" which was adopted in the context of availability of data for Direct Access; SCE has made no showing as to why a standard used in the context of retail choice should be a requirement in making aggregated data available to third parties that will use the data "for analysis, reporting or program management…." D.11-07-056, Attachment D at 6(g).

³⁹ "Covered entities shall collect, store, use, and disclose only as much covered information as is reasonably necessary or as authorized by the Commission to accomplish a specific primary purpose indentified in the notice required under Section 2 or for a specific secondary purpose authorized by the customer."

COMMENTS

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the CPUC. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived nor reduced. Accordingly, this draft resolution was mailed to parties for comments on August 28, 2012.

Timely comments were submitted by SCE, DRA, AReM and LGSEC.

Both AReM and LGSEC support the Draft Resolution and offered no revisions.

DRA voices general support for the Draft Resolution, but requests that the utilities offer a disclaimer or other statement to make clear that the rules as adopted by CPUC in D.11-07-056 hold precedence over the utility tariffs,⁴⁰ and requests that the CPUC reconsider its decision in D.12-08-045 that rejected a request to create a General Order for the adopted privacy rules.⁴¹ This Resolution declines to adopt DRA's requests. The CPUC is reluctant to offer advisory opinions on whether tariffs, rules or orders apply without particular facts at hand. Whether to include a disclaimer can be discussed at the workshop to be held in conjunction with this Resolution and R.12-08-045. The CPUC also rejects DRA's request to reconsider a request to create a General Order for privacy as beyond the scope of this Advice Letter proceeding.

⁴⁰ Reply Comments of the Division of Ratepayer Advocates on Draft Resolution E-4535 at 4 (September 13, 2012)

⁴¹ *Id.* at 4-5.

SCE states that a utility tariff is the only appropriate means by which to implement the privacy requirements of D.11-07-056,⁴² and explains that their use of the "15/15 Rule is an appropriate means of achieving the Commission's privacy goal."⁴³ The CPUC declines to adopt SCE's requests. As outlined above, the options of how to implement D.11-07-056 is left for discussion in the workshop environment. The CPUC also declines to modify this Resolution as suggested by SCE in regards to the applicability of the "15/15 Rule." The CPUC appreciates SCE's attempt to create a methodology for making aggregated data available to third parties, but it is clear that additional discussion is necessary to ensure a consistent implementation and availability of aggregated data across the utilities.

On its own motion, the CPUC modifies the filing date for the revised Advice Letters as directed in this Resolution to November 21, 2012. With the release of D.12-08-045, this Resolution modifies the filing date for the revised Advice Letters to November 21, 2012 to be consistent with the filing date in D.12-08-045. Where appropriate, the utilities may file one Advice Letter encompassing their natural gas and electric operations.

FINDINGS AND CONCLUSIONS

- 1. The utilities filed tariffs on October 27, 2011 to implement the requirements of D.11-07-056.
- 2. The tariffs were protested by DRA, LGSEC, SPURR, AReM, and EnerNOC.
- 3. The tariffs filed by SDG&E, SCE and PG&E implement the privacy rules inconsistently.
- 4. In D.12-08-045, the CPUC ordered a workshop to be held to ensure that the gas utilities implement the privacy rules in a consistent manner.
- 5. This Resolution rejects the proposed tariff modifications of SDG&E, PG&E, and SCE, as explained in the Resolution.

⁴² Comments of Southern California Edison Co. on Draft Resolution E-4535 at 2 (September 13, 2012).

⁴³ *Id.* at 3.

- 6. A consistent implementation of D.11-07-056 is reasonable, and should be done in a uniform manner, where possible.
- 7. The utilities are directed to participate in the workshop ordered by D.12-08-045 to develop a consistent and uniform implementation of the privacy rules.
- 8. These Advice Letters should be re-filed after the workshop ordered in D.12-08-045.
- 9. The re-filed Advice Letters should be based on discussions and any consensus reached between parties during the workshop. If a utility proposal is not based on consensus, the utility should explain why consensus was not reached, and why the proposal is reasonable.
- 10. Aggregated customer information should be made available. The workshop should discuss ways to facilitate the availability of aggregated information, and develop consistent proposals across the utilities.
- 11. The results of discussions at the workshop on availability of aggregated data should be reflected in the re-filed Advice Letters, including any consensus reached on whether an aggregation standard is necessary or not.
- 12. Utility Customer Information Service Request forms should be made consistent across the utilities.

THEREFORE IT IS ORDERED THAT:

- 1. San Diego Gas & Electric Advice Letter 2297-E, Southern California Edison Advice Letter 2644-E and Pacific Gas and Electric Advice Letter 3251-G/3934-E are rejected.
- 2. San Diego Gas & Electric, Southern California Edison, and Pacific Gas and Electric are directed to file a Tier 2 Advice Letter by November 21, 2012 with conforming changes to their tariffs implementing the privacy rules adopted in D.11-07-056.
- 3. San Diego Gas & Electric, Southern California Edison, and Pacific Gas and Electric are directed to participate in a workshop directed by D.12-08-045 that will be held to develop a consistent implementation of the privacy rules, and use the results of that workshop as a basis for their Advice Letter filing.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on September 27, 2012; the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director